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No. 84-1255

In The
Supreme Court of the United States
October Term, 1984

ALPHA BETA COMPANY, CAROLE COLE AND LYNNE COPPIN,

Petitioners,

vs.

RITA NAHM,

Respondent.

PETITIONER'S REPLY MEMORANDUM

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In opposition to the Petition for Writ of Certiorari, Real Party in Interest Rita Nahm (hereinafter "Nahm") has filed a brief which confuses, as did the California Court of Appeal, the doctrine of preemption as it is applied under Section 301 with that applicable to disputes that arise subject to the National Labor Relations Act (NLRA). Moreover, just last month in *Allis-Chalmers Corp. v. Lueck*, — U.S. —, 53 LW 4463 (1985), this Court unanimously rejected each of Nahm's arguments.

I

When A State Law Claim Is Substantially Dependent Upon Application Of A Labor Contract, The Claim Is Preempted.

As did the Plaintiff in *Allis-Chalmers,* Nahm seeks refuge in the preemption exception established in *Farmer v. Carpenters,* 430 U.S. 290 (1977). But, this case is governed by the preemption principles applicable to Section 301, not the NLRA. Though the two preemption doctrines are related, preemption under Section 301 is broader and is not limited to actions alleging contract violations. *Allis-Chalmers Corp. v. Lueck, supra,* at 4465 and n. 6.

> "Thus, questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort. Any other result would elevate form over substance and allow parties to evade the requirements of § 301 by re-labeling their contract claims as claims for tortious breach of contract.
>
> Were state law allowed to determine the meaning intended by the parties in adopting a particular con-

> tract phrase or term, all the evils addressed in Lucas Flour [369 U.S. 95] would recur.
>
> * * *
>
> Therefore, state-law rights and obligations that do not exist independently of private agreements, and that as a result can be waived or altered by agreement of private parties are preempted by those agreements. . . . If the state tort law purports to define the meaning of the contract relationship, that law is preempted." *Id.* at 4465-4466.

Both Nahm and the California Court of Appeal concede that Nahm's complaint cannot be adjudicated without interpreting and applying the collective bargaining agreement under which Nahm worked.[1] Indeed, Nahm's brief contains a litany of the various breaches of the collective bargaining agreement which underlie her complaint. (Brief, p. 2.) The mere fact that these breaches are alleged to have been "willful" is insufficient to avoid preemption "[s]ince nearly any alleged willful breach of contract can be restated as a tort claim for breach of a good-faith obligation under a contract . . . [and] [c]laims involving vacation or overtime pay, work assignment, unfair discharge—in short, the whole range of disputes traditionally resolved through arbitration—could be brought in the first instance in state court by complaint in tort rather than in contract." *Id.*, at 4467.

Simply stated, and to paraphrase this Court, Nahm's complaint is substantially dependent upon analysis of the

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[1] In this regard, the Court of Appeal held: "Undeniably the collective bargaining agreement will be implicated, but only as it may have been used or disregarded in the course of the alleged 'episodes and encounters designed to harass, humiliate and upset plaintiff.' " (Petition, App. 12-13.)

terms of a collective bargaining agreement and must, accordingly, either be treated as a Section 301 claim or dismissed as preempted under federal labor-contract law.

The *Farmer* exception had no applicability to the state tort claim at issue in *Allis-Chalmers* for the same reason that it has no applicability here. *Farmer* dealt with preemption under the NLRA and did not implicate the terms of a collective bargaining agreement. Where it did, the claims *were dismissed.* 430 U.S. at 303.

To the extent that *Farmer's* principles have applicability, they support preemption. The *Farmer* exception was limited to the manner in which the employment discrimination occurred. Nahm's complaint is not limited to the manner in which Alpha Beta acted but challenges the substantive validity of Alpha Beta's actions under the contract. (Brief, p. 2.) Every single federal court which has found preemption to be applicable to identical cases has considered the *Farmer* exception and rejected it. *E.g., Olguin v. Inspiration Consolidated Copper Co.,* 740 F.2d 1468 (9th Cir. 1984).

Nahm's effort to limit these federal cases to actions involving claims for wrongful discharge is both factually incorrect and legally irrelevant. In each case, the plaintiffs did not limit their claims to wrongful termination but sought to recover for a host of perceived wrongs. *E.g., Beers v. Southern Pacific Transportation Co.,* 703 F.2d 425 (9th Cir. 1983). Regardless, the contractual arbitration machinery is the *exclusive* remedy for all grievances, whether small or large in nature. *Republic Steel Corp. v. Maddox,* 379 U.S. 650 (1965). Moreover, in *Allis-Chalmers,* this Court refused to limit the preemptive reach of

Section 301 to "major disputes" under the contract. 53 LW at 4466, n. 9.

In adjudicating Nahm's complaint, California will necessarily be defining Alpha Beta's rights vis-a-vis the contract. *Allis-Chalmers* bars this intrusion.

II

Arbitration Was Required If The Central Role Of Arbitration Is To Be Preserved.

Nahm does not attempt to justify her failure to invoke the arbitration process. No justification exists. It is *factually undisputed* that *every* single one of Nahm's allegations could have been processed through arbitration. (Petition, App. 3.) Again, the holding of *Allis-Chalmers* expressly bars the circumvention of the arbitral process.

> "Perhaps the most harmful aspect of the Wisconsin decision is that it would allow essentially the same suit to be brought directly in state court without first exhausting the grievance procedures established in the bargaining agreement. The need to preserve the effectiveness of arbitration was one of the central reasons that underlay the Court's holding in Lucas Flour. See 369 U.S., at 105. The parties here have agreed that neutral arbitrator will be responsible, in the first instance, for interpreting the meaning of their contract. Unless this suit is pre-empted, their federal right to decide who is to resolve contract disputes will be lost." *Allis-Chalmers Corp. v. Lueck, supra,* at 4467.

The concerns evidenced in *Allis-Chalmers* are even more compelling here because of the all-encompassing nature of the arbitration provision. Unlike most contractual provisions, Alpha Beta agreed to arbitrate all disputes involving or arising out of the meaning, inter-

pretation, application or alleged violation of the agreement, *"including the arbitrability of all such matters."* (Petition, App. 3.) *No* claim is outside the scope of this arbitration clause.

Thus, even if Nahm's complaint were construed as limited solely to the manner in which Alpha Beta acted, it would still be preempted. It is not for Nahm, nor any court, to determine what is or is not covered by the collective bargaining agreement. Under this broad arbitration clause, those questions have been reserved for arbitration. *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, n. 7 (1960). For Nahm to claim (Brief, p. 3) or for California to determine (Petition, App. 13) that arbitration cannot provide the requested relief is to necessarily intrude into the arbitrator's province.

If the central role played by arbitration in the labor arena is to be maintained, its circumvention cannot be permitted. Otherwise, every employee who suffers emotional distress as a result of an unemployment decision will easily find refuge in state tort law. In short order, this newly created California exception will "eviscerate a central tenet of federal labor-contract law under § 301 that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance." *Allis-Chalmers Corp. v. Lueck, supra,* at 4467.

III

CONCLUSION

For the aforesaid reasons, it is respectfully submitted that the decision of the California Court of Appeal is contrary to well-established federal law and presents important issues requiring that the Petition for a Writ of Certiorari be granted.

DATED: May 22, 1985.

Respectfully submitted,

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